

EXHIBIT 1

FILED
5th JUDICIAL DISTRICT COURT
Chaves County
11/1/2018 2:23 PM
KATIE ESPINOZA
CLERK OF THE COURT
Janet Bloomer

Case assigned to Romero, Freddie J.

1. At all times pertinent hereto, Roman Franco was a citizen of the State of New Mexico and a resident of Chaves County.
2. Christmas by Krebs is a domestic for-profit New Mexico corporation with its principal place of business in Roswell, Chaves County, New Mexico and a registered agent at 3911 S. Main, Roswell, New Mexico 88203.
3. Mr. Franco was employed by Christmas by Krebs at its Roswell, New Mexico factory, and the allegations in this Complaint arise directly out of that employment.

4. Mr. Franco has exhausted his administrative remedies and timely appeals the Order of Non-Determination issued by the New Mexico Department of Workforce Solutions on August 7, 2018 regarding HRB # 18-07-30-0253 and EEOC # 39B-2018-00768. Mr. Franco requests a trial de novo pursuant to NMSA 1978, Section 28-1-13(A) (2005) and 42 U.S.C. § 2000e-5(f)(1) (2012).
5. Venue and jurisdiction are proper in this Court.

FACTUAL BACKGROUND

6. Christmas by Krebs is a glass ornament manufacturer and seller based in Roswell, New Mexico.
7. On or around June 3, 2017, Mr. Franco was hired by Christmas by Krebs as a shipping manager and began working in its Roswell factory.
8. As shipping manager, Mr. Franco's main duties were office tasks, such as scheduling trucks, computer work, keeping track of merchandise, updating inventory and shipping and arrival dates of merchandise.
9. In late August 2017, Mr. Franco developed an ulcer on his foot. Because of complications and infections with the ulcer, Mr. Franco had his leg amputated in early September 2017.
10. Mr. Franco notified Christmas by Krebs immediately about his medical condition, including the amputation, and expressed his eagerness to recover and return to work. Mr. Franco's supervisor encouraged him to get better but also stated in October 2017 that he did not know how Mr. Franco could do his job in a wheelchair.
11. Throughout the remainder of 2017 and beginning of 2018, Mr. Franco informed Christmas by Krebs about his recovery and desire to return to work. Mr. Franco

informed Christmas by Krebs that he was temporarily in a wheelchair but that he would be getting a prosthetic leg and physical therapy to learn to walk again.

12. Throughout the remainder of 2017 and beginning of 2018, Christmas by Krebs encouraged Mr. Franco to get better and to keep the company updated on the progress of his recovery.

13. In January 2018, Mr. Franco received a medical release from his doctor stating that he was released to return to sedentary office work. Mr. Franco immediately sent this release to Christmas by Krebs.

14. On or around January 30, 2018, Mr. Franco submitted forms to Christmas by Krebs regarding his medical condition, and indicated that he was prepared to return to work on Monday, February 5, 2018. Mr. Franco inquired about whether the company's bathroom was wheelchair-accessible and requested temporary accommodations, such as having assistance loading and unloading his wheelchair from his truck at the beginning and end of the day, and the need to attend physical therapy in the future.

15. At this time, Mr. Franco was able to perform the duties of his shipping manager position and was eager to return to work.

16. Mr. Franco communicated to Christmas by Krebs around this time to inform them that he would be able to perform the essential duties of his job with some temporary accommodations and that he would be able to recover from his medical condition in the future.

17. Christmas by Krebs did not permit Mr. Franco to return to work. Instead, on or around February 12, 2018, Christmas by Krebs terminated Mr. Franco's employment.
18. On or around February 13, 2018, Christmas by Krebs sent Mr. Franco a job description for a purchasing position at the company and encouraged him to apply. The purchasing position required only sedentary work.
19. Mr. Franco completed all requirements to apply for the purchasing position, including going to the Roswell office to complete the application.
20. Shortly after, Christmas by Krebs inquired about Mr. Franco's medical appointments and physical therapy appointments.
21. On or around March 6, 2018, Christmas by Krebs notified Mr. Franco that he was not hired for the purchasing position.

COUNT I: Violation of the New Mexico Human Rights Act

22. Under the Human Rights Act ("HRA"), Sections 28-1-1 to -15 (1953, as amended through 2007), it is an unlawful discriminatory practice for an employer to "refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment" based on physical or mental handicap or serious medical condition. Section 28-1-7(A).
23. Under the HRA, it is also an unlawful discriminatory practice for "any employer to refuse or fail to accommodate a person's physical or mental handicap or serious medical condition, unless such accommodation is unreasonable or an undue hardship." Section 28-1-7(J).

24. Mr. Franco was qualified to perform the duties of the shipping manager position at Christmas by Krebs.
25. Mr. Franco informed Christmas by Krebs about his physical handicap and serious medical condition and asked for reasonable accommodations.
26. Christmas by Krebs denied Mr. Franco reasonable accommodations in violation of Section 28-1-7(J).
27. Christmas by Krebs terminated Mr. Franco from the shipping manager position based on his physical handicap and serious medical condition in violation of Section 28-1-7(A).
28. Mr. Franco was also qualified to perform the duties of the purchasing position for which he applied in early 2018.
29. Christmas by Krebs refused to hire Mr. Franco for the purchasing position based on his physical handicap and serious medical condition in violation of Section 28-1-7(A).

COUNT II: Violation of the Americans with Disabilities Act

30. Under the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101-12213 (2012), “[no] covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a).
31. Under the ADA, an employer’s failure to provide reasonable accommodations to the known physical limitations of an otherwise qualified individual constitutes discrimination. *Id.* § 12112(b)(5)(A).

32. Under the ADA, an employer's denial of employment opportunities to a qualified job applicant is discriminatory if the denial is based on the need for the employer to provide reasonable accommodations. *Id.* § 12112(b)(5)(B).
33. Christmas by Krebs is a covered entity under the ADA. *See id.* § 12111(2).
34. Mr. Franco is an individual qualified to perform the essential functions of the shipping manager and purchasing positions at Christmas by Krebs.
35. Mr. Franco was an individual with a disability under the ADA.
36. Christmas by Krebs knew of Mr. Franco's disability beginning in or around late August or early September 2017.
37. Christmas by Krebs intentionally and unlawfully failed to provide reasonable accommodations to Mr. Franco for his shipping manager position in violation of the ADA.
38. Christmas by Krebs intentionally and unlawfully discriminated against Mr. Franco based on his physical handicap by terminating him from his position as shipping manager in violation of the ADA.
39. Christmas by Krebs intentionally and unlawfully discriminated against Mr. Franco by denying Mr. Franco employment in the purchasing position based on his disability in violation of the ADA.

WHEREFORE, Mr. Franco prays this Court to hold a jury trial and:

- A. Award judgment in his favor against Christmas by Krebs on each of his claims;
- B. Award actual and special damages in an amount to be determined at trial;
- C. Award him attorneys' fees and costs as permitted by law;

- D. Award him punitive damages as permitted by law; and
- E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

JONES, SNEAD, WERTHEIM
& CLIFFORD, P.A.
Attorneys for Plaintiff

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EXHIBIT 2

SUMMONS	
District Court: FIFTH JUDICIAL Chaves County, New Mexico Court Address: Post Office Box 1776 Roswell, New Mexico 88202-1776 Court Telephone No.: 575-622-2212	Case Number: D-504-CV-2018-01240 Assigned Judge: Honorable Freddie J. Romero
Plaintiff(s): Roman Franco v. Defendant(s): Christmas By Krebs	Defendant Name: Christmas By Krebs Address: c/o Walter Krebs, Registered Agent 3911 S. Main Roswell, NM 88203

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at Roswell, New Mexico, this 2nd day of November, 2018.

KATIE ESPINOZA
CLERK OF DISTRICT COURT

By: Janet Bloomer
Deputy



/s/Jiada Lin

Signature of Attorney for Plaintiff

Name: SAMUEL C. WOLF

JIADAI LIN

Address: Jones, Snead, Wertheim & Clifford, P.A.

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THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, 2018, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

[] to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at _____ (*insert defendant's last known mailing address*).

[] to _____, an agent authorized to receive service of process for defendant _____.

[] to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (*used when defendant is a minor or an incompetent person*).

[] to _____ (*name of person*), _____, (*title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

EXHIBIT 3

STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT

ROMAN FRANCO,

Plaintiff,

No. D-504-CV-2018-01240

v.

Honorable Freddie J Romero

CHRISTMAS BY KREBS,

Defendant.

**NOTICE TO ADVERSE PARTY OF
REMOVAL OF CIVIL ACTION TO FEDERAL COURT**

TO: PLAINTIFF ROMAN FRANCO AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 3, 2018, Defendant filed a Notice of Removal of Civil Action in the United States District Court for the District of New Mexico. A copy of the Notice of Removal of Civil Action was filed and is served contemporaneously herewith and attached as **Exhibit 1**.

DATED this 3rd day of December, 2018.

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Charlotte Lamont

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ATTORNEYS FOR DEFENDANT

I hereby certify that a copy of the foregoing document was served via electronic mail on this 3rd day of December, 2018, on all counsel of record as follows:

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/s/ Charlotte Lamont

FIRMWIDE:160764154.1 999999.3930

EXHIBIT 4

STATE OF NEW MEXICO
COUNTY OF CHAVES
FIFTH JUDICIAL DISTRICT

ROMAN FRANCO,

Plaintiff,

No. D-504-CV-2018-01240

v.

Honorable Freddie J Romero

CHRISTMAS BY KREBS,

Defendant.

NOTICE OF REMOVAL TO FEDERAL COURT

**TO: CLERK OF THE STATE OF NEW MEXICO, COUNTY OF CHAVES,
FIFTH JUDICIAL DISTRICT:**

PLEASE TAKE NOTICE that the above-captioned action, filed in the State of New Mexico, County of Chaves, Fifth Judicial District, entitled *Roman Franco v. Christmas by Krebs*, has been removed to the United States District Court for the District of New Mexico.

The Notice of Removal of the above-captioned action from the State of New Mexico, County of Chaves, Fifth Judicial District, to the United States District Court for the District of New Mexico, was filed on December 3, 2018, in the United States District Court for the District of New Mexico. A true and correct copy of the Notice of Removal is attached hereto as **Exhibit A**.

DATED this 3rd day of December, 2018.

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/

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